

Complaint

IN THE MATTER OF

THE ERICKSON MARKETING GROUP INC.

D/B/A

ROCKY MOUNTAIN SUNSCREEN

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTIONS 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4583; File No. 152 3268

Complaint, July 6, 2016 – Decision, July 6, 2016

This consent order addresses The Erickson Marketing Group Inc.'s advertising for its sunscreen products. The complaint alleges that the respondent violated Sections 5(a) and 12 of the Federal Trade Commission Act by representing that its sunscreen products are "all natural" when they contain the synthetic ingredients Dimethicone, Polyethylene, Butyloctyl Salicylate, and Neopentyl Glycol Diethylhexanoate. The consent order prohibits any representation regarding whether any product is all natural or 100% natural; the extent to which such product contains any natural or synthetic ingredient or component; the ingredients or composition of such product; or the environmental or health benefits of such product, unless the representation is non-misleading.

Participants

For the *Commission*: Robert M. Frisby, Gregory Madden, and John Andrew Singer.

For the *Respondent*: David C. Erickson, President, *pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that The Erickson Marketing Group Inc., a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent The Erickson Marketing Group Inc., also doing business as Rocky Mountain Sunscreen, is a Colorado corporation with its principal office or place of business at 14700 W.66th Place, Suite 2, Arvada, Colorado 80004.

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2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to consumers, including Face Stick SPF 60 All Natural Sunscreen and Face Stick SPF 60 Kids All Natural Sunscreen. These sunscreen products are “drugs” within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent advertises Face Stick SPF 60 All Natural Sunscreen and Face Stick SPF 60 Kids All Natural Sunscreen on the Internet. These products retail for \$7.99.

5. Respondent has disseminated or has caused to be disseminated advertisements for Face Stick SPF 60 All Natural Sunscreen and Face Stick SPF 60 Kids All Natural Sunscreen, including but not necessarily limited to the attached Exhibit A. These materials contain the following statements:

Natural Face Stick

- a. True to form, Rocky Mountain Sunscreen offers superior protection in an all natural formula with their Natural Face Stick --- available for both kids and adults. This *natural sunscreen* option helps get protection in the areas more difficult to apply liquid sunscreen, like on the nose and ears.
- b. This all natural sunscreen Face Stick provides SPF 60 protection and its ingredients include zinc oxide and titanium dioxide, two of the most effective blockers of harmful UVA rays. This product is extraordinarily effective and is ideal for those with sensitive skin. The Face Stick for kids is a must have for child care centers, day camps, and even moms on the go, as its easy, smooth application ensures that little faces are protected and there’s no tears from sunscreen in the eyes or hair.

Complaint

- c. This all *natural sunscreen* Face Stick is very effective, yet safe for everyday use. It is non-irritating, non-greasy, and non-comedogenic. It is also free of fragrances, nut oils, and Vitamin A (retinyl palmitate). And, just like all the sunscreen options from Rocky Mountain Sunscreen, it can stand up to the elements, such as sweat, chlorine, and more. SPF 60 All Natural Kids Face Stick Sunscreen is also ideal for active youngsters for any type of summertime activity they may enjoy.

(Exhibit A, Internet webpage www.rmsunscreen.com (May 2015) (emphasis in original)).

Count I False Claim

6. In connection with the advertising, labeling, promotion, offering for sale, or sale of Face Stick SPF 60 All Natural Sunscreen and Face Stick SPF 60 Kids All Natural Sunscreen, Respondent has represented, directly or indirectly, expressly or by implication, including through the name of the product, that Face Stick SPF 60 All Natural Sunscreen and Face Stick SPF 60 Kids All Natural Sunscreen are “all natural.”

7. In fact, Face Stick SPF 60 All Natural Sunscreen and Face Stick SPF 60 Kids All Natural Sunscreen are not “all natural” because they contain the synthetic ingredients Dimethicone, Polyethylene, Butyloctyl Salicylate, and Neopentyl Glycol Diethylhexanoate. Therefore, the “all natural” representation set forth in Paragraph 6 is false or misleading.

Violations of Sections 5 and 12

8. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

THEREFORE, the Federal Trade Commission this sixth day of July, 2016 has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A

All Natural Sunscreen Face Stick: Kids and Adults

Items: 0 Total: \$0.00 | View Cart | Checkout | My Account | Help

ROCKY MOUNTAIN
SUNSCREEN

Inspired by Altitude
For superior protection in any environment

Home | Why RMS? | Skin & Sun | FAQs

ON SALE TODAY!

PRODUCTS

Shop Sunscreen by SPF
SPF 30
SPF 30 All Natural
SPF 50
SPF 60
SPF 70

Shop Sunscreen by Size
Travel Size
Refillable Bottles
Quarts
Gallons

Specialty Products
Lip Balm
Sunburn Relief
Hand Sanitizer
Insect Repellent
Wedding Favors (Custom)

Spray Sunscreen
Natural Face Stick
Kids Sunscreen
Bulk Pump Dispensers
Event Packages
ON SALE TODAY
What's with the Purple Mountains?

Custom Lip Balm
View All Products

MORE INFO

Schools / Childcare
Outdoor / Gov't Workers
Wholesale Dealer Site
FDA New 2012 Regulations
Sunscreen Safety Concerns
Partners / Athletes
Media & Press
Find a Retailer
Our Guarantee (returns)
Privacy
Shipping Details

Natural Face Stick

True to form, Rocky Mountain Sunscreen offers superior protection in an all natural formula with their Natural Face Stick—available for both kids and adults. This natural sunscreen option helps get protection in the areas more difficult to apply liquid sunscreen, like on the nose and ears.

This all natural sunscreen Face Stick provides SPF 60 protection and its ingredients include zinc oxide and titanium dioxide, two of the most effective blockers of harmful UVA rays. This product is extraordinarily effective and is ideal for those with sensitive skin. The Face Stick for Kids is a must have for child care centers, day camps, and even moms on the go, as its easy, smooth application ensures that little faces are protected and there's no tears from sunscreen in the eyes or hair.

This all natural sunscreen Face Stick is very effective, yet safe for everyday use. It is non-irritating, non-greasy, and non-comedogenic. It is also free from fragrances, nut oils, and Vitamin A (retinyl palmitate). And, just like all the sunscreen options from Rocky Mountain Sunscreen, it can stand up to the elements, such as sweat, chlorine, and more. SPF 60 All Natural Kids Face Stick Sunscreen is also ideal for active youngsters for any type of summertime activity they may enjoy.

Get your all natural face sticks for fast and effective face protection. And browse the site to shop for all your sunscreen needs, from bulk gallons to travel size bottles to lip balm and hand sanitizer. We have you covered when you want to get out in the sun.

Displaying products 1 - 2 of 2 results

Show: 30 Sort: Default

 Face Stick SPF 60 All Natural Sunscreen Price: \$7.99 ★★★★★ ADD TO CART MORE INFO	 Face Stick SPF 60 Kids All Natural Sunscreen Price: \$7.99 ★★★★★ ADD TO CART MORE INFO
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http://www.rmssunscreen.com/NaturalSunscreen.aspx[5/22/2015 2:25:29 PM]

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, 15 U.S.C § 45 *et seq.*; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order (“consent agreement”), a statement that respondent neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, an admission by the respondent of facts necessary to establish jurisdiction for purposes of this action, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent The Erickson Marketing Group Inc., also doing business as Rocky Mountain Sunscreen, is a Colorado corporation with its principal office or place of business at 14700 W. 66th Place, Suite 2, Arvada, Colorado 80004.

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2. The Commission has jurisdiction over the subject matter of this proceeding and over the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

- A. Unless otherwise specified, “respondent” shall mean The Erickson Marketing Group Inc., a corporation, also doing business as Rocky Mountain Sunscreen, its successors and assigns, and its officers, agents, representatives, and employees.
- B. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product must not make any representation, expressly or by implication, including through the use of a product name, trademark, or trade name, about:

- A. whether such product is all natural or 100% natural;
- B. the extent to which such product contains any natural or synthetic ingredient or component;
- C. the ingredients or composition of such product; or
- D. the environmental or health benefits of such product,

unless the representation is non-misleading, including that, at the time such representation is made, the respondent possesses and relies upon competent and reliable evidence, which when

Decision and Order

appropriate based on the expertise of professionals in the relevant area must be competent and reliable scientific evidence, that is sufficient in quality and quantity based on standards generally accepted in the relevant fields when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true. For the purposes of this Provision:

1. “competent and reliable evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results; and
2. “competent and reliable *scientific* evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

IT IS FURTHER ORDERED that respondent The Erickson Marketing Group Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the

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representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

IT IS FURTHER ORDERED that respondent The Erickson Marketing Group Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent must maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

IV.

IT IS FURTHER ORDERED that respondent The Erickson Marketing Group Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement,

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Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re The Erickson Marketing Group Inc., Docket No. C-4583.

V.

IT IS FURTHER ORDERED that Respondent The Erickson Marketing Group Inc., and its successors and assigns, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit additional true and accurate written reports.

VI.

This order shall terminate on July 6, 2036, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the

Analysis to Aid Public Comment

later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order as to The Erickson Marketing Group Inc., d/b/a Rocky Mountain Sunscreen (hereafter “respondent”).

The proposed consent order (“order”) has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the order and the comments received, and will decide whether it should withdraw the order or make it final.

This matter involves the respondent’s advertising for its sunscreen products. The Commission’s complaint alleges that the respondent violated Sections 5(a) and 12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a) and 52, by falsely representing that its sunscreen products are “all natural.” It also alleges that the sunscreen products are not “all natural” because they contain the synthetic ingredients Dimethicone, Polyethylene, Butyloctyl Salicylate, and Neopentyl Glycol Diethylhexanoate.

The order includes injunctive relief that prohibits these alleged violations and fences in similar and related violations. It also includes provisions to assist the Commission in monitoring and enforcing compliance with the order.

Analysis to Aid Public Comment

Part I prohibits any representation regarding whether any product is all natural or 100% natural; the extent to which such product contains any natural or synthetic ingredient or component; the ingredients or composition of such product; or the environmental or health benefits of such product, unless the representation is non-misleading. The respondent must have competent and reliable evidence, sufficient in quality and quantity based on standards generally accepted in the relevant fields when considered in light of the entire body of relevant and reliable evidence, to substantiate that the representation is true. When appropriate, based on the expertise of professionals in the relevant area, the substantiation must be competent and reliable scientific evidence. “Competent and reliable evidence” means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results. “Competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.

Parts II through V require the respondent to: (1) keep records of advertisements and substantiation relevant to representations covered by Part I; (2) deliver a copy of the order to principals, officers, directors, and managers, and to employees, agents, and representatives having responsibilities with respect to the subject matter of the order; (3) notify the Commission of changes in corporate structure that might affect compliance obligations; and (4) file compliance reports with the Commission.

Part VI provides that, with exceptions, the order will terminate in twenty years.

The purpose of this analysis is to facilitate public comment on the order, and it is not intended to constitute an official interpretation of the complaint or order, or to modify the order’s terms in any way.

Complaint

IN THE MATTER OF

ABS CONSUMER PRODUCTS, LLC
D/B/A
EDEN BODYWORKS

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4584; File No. 152 3269
Complaint, July 6, 2016 – Decision, July 6, 2016

This consent order addresses ABS Consumer Products, LLC's advertising for its shampoo, conditioner, and other hair care products. The complaint alleges that the respondent violated Section 5(a) of the Federal Trade Commission Act by representing that their products are "all natural" when they contain one or more synthetic ingredients. The consent order prohibits any representation regarding whether any product is all natural or 100% natural; the extent to which such product contains any natural or synthetic ingredient or component; the ingredients or composition of such product; or the environmental or health benefits of such product, unless the representation is non-misleading.

Participants

For the *Commission*: Robert M. Frisby, Gregory Madden, and John Andrew Singer.

For the *Respondent*: Darrell N. Phillips, Pietrangelo Cook PLC; and Kevin Swinton, solo practitioner.

COMPLAINT

The Federal Trade Commission, having reason to believe that ABS Consumer Products, LLC, a limited liability company, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent ABS Consumer Products, LLC, also doing business as EDEN BodyWorks, is a limited liability company with its principal office or place of business at 3634 Park Avenue, Memphis, Tennessee 38111.